

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of

**PETITION TO AMEND RULE 38(d)
OF THE RULES OF THE
SUPREME COURT OF ARIZONA**

Supreme Court No. R-09-0038

**Phoenix School of Law's
Response to Maricopa County
Attorney's Office Comments**

The Phoenix School of Law files this response to the comments of the Maricopa County Attorney's Office posted May 20, 2010, and addresses the suggested changes to the proposed amendments to Rule 38(d) of the Rules of the Supreme Court of Arizona related to limited law student practice.

Respectfully submitted this 20th Day of May, 2010

The Phoenix School of Law

By:



Gene Clark

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I. RESPONSE TO COMMENTS:

The Maricopa County Attorney's office generally supports the petition to restate and amend Rule 38(d) of the Rules of the Supreme Court titled "Clinical Law Professors and Law Students" which establishes a protocol for experiential learning opportunities for law students under direct supervision of licensed Arizona attorneys and provides for activities by Clinical Law Professors not otherwise admitted to practice in Arizona. It appears there is general agreement among all stakeholders that over the years amendments to Rule 38(d) have resulted in text that is disjointed and sometimes difficult to apply and that the proposed amendment restates existing Rule 38(d) to add more definition, clarity and accountability.

The proposed amendment provides a logical presentation and organization, clarifies and defines terms, separates the provisions of clinical law professor limited practice from qualified law student limited practice, consolidates provisions applicable to various topics, clarifies the duration and requirements for student limited practice certification, and clarifies the responsibilities of law schools, students, agencies, and supervising attorney's as to law student limited practice.

The Maricopa County Attorney's Office raises two areas of concern to the restated rule. The suggestion related to the concern of termination of a law students limited practice certificates unnecessarily returns to the disjointed and illogical presentation in the existing rule. This area of concern is adequately addressed in the proposed amendment, and in any case is more appropriately addressed by specific changes to the proposed text within it's logical restatement and structure of the rule.

The Phoenix School of Law agrees with the concerns and suggested solution to the clear allowance of certified limited practice by 2L law students. Each of those concerns are addressed below.

A. Limited Student Certification Termination Provisions.

The Maricopa County Attorney Office comments that any post graduation, pre-bar admission supervised limited student practice should be limited to a law practice that is a part of "a legal internship program conducted by the state or any political subdivision thereof." The suggested method making this change to the proposed amendment is to retain a portion of the previously unworkable and unnecessary requirement that law students during their active enrollment in law

school must be contemporaneously enrolled in a for credit law school course during the term of the student certification. The Phoenix School of Law suggests that the proposed change is not needed, and if needed, should be made by amendment to the re-codified Rule 38(d) language, not by inclusion of prior Rule 38(d) language.

The implicit assumption that without a contemporaneous enrollment in a supporting law school for credit class, the law school would have no involvement or responsibility as to the limited practice law student is simply incorrect. Under the proposed amendment to Rule 38(d) the sponsoring law school must be meaningfully involved with the student during the period of any limited certification. The law student's certification may be terminated by the Dean of the Law School at any time for any reason. Providing that pre-graduation a law student's limited practice would be limited in time to the start and completion dates of particular for credit law school courses, but that after graduation limited practice would be limited only to any "internship program conducted by the state or any political subdivision" is an unneeded distinction. Such a provision leaves out law student experiential training stake holders such as Community Legal Services, the Arizona Bar Foundation, all the non-profit and for profit public

interest lawyer, otherwise qualified private lawyers including contract lawyers for public agencies, and virtually all Vol Lawyer programs. It also limits the period of actual limited student practice for 2L and 3L law students in all settings, including the Maricopa County Attorney's Office, to the enrolment dates of particular law school courses. A sound program of experiential learning for law students should include opportunities with all stake holders.

The Phoenix School of Law supports leaving the language of the proposed re-codification and amendment unchanged as to the provisions for termination of the student certificate of limited practice. California, and many other states, have operated under rules similar to the proposed amendment for several decades with no significant reported problems.

If the situation of post-graduate pre-bar certification were to be amended, either of the following two possible methods of modification to the propose re-codification and amendment that will preserve intact the benefits of the re-codification and the resulting benefits to law student experiential learning, while answering the concerns raised:

1. Eliminate provision h.4 ***Failure to Take, or Pass, the Bar***

Examination and substitute:

h.4 *Graduation from or discontinuation of law school attendance.*

The Certified Limited Practice Student graduates from law school or fails to remain an enrolled full or part time student within the American Bar Association accreditation standards moving timely towards graduation from law school.

2. Amend provision h.4 ***Failure to Take, or Pass, the Bar Examination*** by adding the following sentence to that section:

Provided however, that during such period of post-graduation time the Dean of the Law School must certify in writing, on a monthly basis, based on such reporting from the Certified Limited Practice Student and the Supervising Attorney as the Law School shall require, that the law student has received and is receiving adequate lawyer supervision and guidance.

The Phoenix School of Law believes the proposed Rule should not be changed as to its termination of student certification provisions. If the rule is changed, one of the two suggested amendments should be used.

B. Provision for 1L summer law students.

The Phoenix School of Law endorses and has no objection to the suggested changes to amended Rule c.1 and the elimination of proposed Rule e.1 to clarify that law students in their 2L year, or have graduated subject to the termination of certification provisions, may be Qualified Limited Practice Students.

CONCLUSION

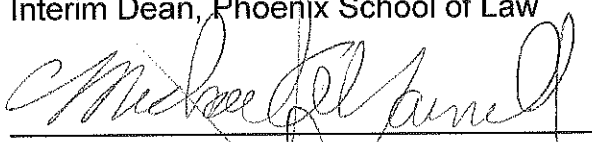
The Phoenix School of Law appreciates and values the comments by the Maricopa County Attorney's Office. With the adoption of the proposed changes to the provisions concerning 2L students, and no change to proposed Rule h.4 (or alternatively the adoption of either of the Phoenix School of Law suggested modifications to rule h.4 to either eliminate or clarify law school control of service of law students after graduation and prior to bar passage), the Phoenix School of Law respectfully requests approval of the proposed restatement and amendment of Arizona Supreme Court Rule 38(d) in order to better provide experiential learning opportunities for law students under direct supervision of licensed Arizona attorneys, while preserving current Rule 38(d) provisions as to the activities by Clinical Law Professors not otherwise admitted to practice in

Arizona. The proposed restatement and amendment will result in a better crafted Rule 38, adding definition, clarity and accountability.



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5/20/2010
date



Michael A. Yarnell
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5/20/2010
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